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Analysis of the Implementation of the NRC with Respect to Statelessness in Assam

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Abstract

On 31st August 2019, the final version of the National Register of Citizens was published. It was meant to be a seamless solution to the so-called 'immigration problem' that the people of Assam have been facing for the last few decades. The demand for such a Register, therefore, dates back to the Assam Agitation. An undoubtedly sizable task, it has now drawn criticism on several grounds. The most common criticism being that it has successfully rendered 1.9 million people in Assam stateless. A stateless person is one who belongs to no particular 'nation' or 'state'. This is an issue that requires urgent attention as it has resulted in the violation of human rights and deprivation of basic resources. This research paper attempts to examine whether the Register has successfully addressed the aforementioned problem. In order to do so, the researcher has examined the procedural aspects of drafting the Register and its subsequent implementation. Further, the paper explores the after effects of the implementation of such a Register, while attempting to arrive at solutions to resolve the various issues created via such an implementation.

Keywords: Assam Accord, Citizenship, Illegal Migrants, Refugees, Statelessness

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1. Introduction

"I won't die before I prove my Indian citizenship," says 100 year-old Chandra Das.¹

Citizenship is an identity that can be best defined as a 'suitcase of rights'.² It is a doorway to one's State conferred identity and one's rights, duties and obligations. It stands distinct from one's nationality, which acts as a link between a person and a State, allowing an individual to be recognized within the domain of International law.³ Citizenship is a prerequisite to avail basic civil rights, such as the right to vote, right to access to public healthcare among various others. Thus, it is vital for the survival and well-being of the people residing in the state. The importance of citizenship and the need to eradicate statelessness has been recognized in international forums like the United Nations. The lack of such state conferred identity would render an individual stateless. The paper exclusively focuses on the scope of statelessness within Assam. The release of the National Register of Citizens (hereinafter referred to as NRC) on August 31, 2019 was the result of decades long struggle of the people of Assam. The Register contains details of Indian citizens living inside and outside India. The first NRC was drafted in accordance with the 1951 Census.

The Assam Accord, drafted in 1985, was the first legal confirmation of a hierarchical model of citizenship, with the Assamese people having a claim to citizenship that was beyond legal disputation, and the Bangladeshi immigrants as the 'other'. The NRC drafted in 2019 has the same sentiment. As many as 1.9 million people had their names excluded from the Register.⁴ This paper attempts to highlight the aforementioned struggle and critically analyses whether or not

¹ *India Assam: I won't die before I prove my Indian Citizenship*, THE BBC (Sept 3, 2018), <https://www.bbc.com/news/world-asia-india-4519270>.

² Thomas Janoski & Brian Gran, *Political Citizenship: Foundations of Rights*, in HANDBOOK OF CITIZENSHIP STUDIES, 13 (SAGE Publications 1st ed., 2002).

³ *STC v. CTO & Ors*, AIR 1963 SC 1811; *Dr. Subramanian Swamy v. The Registrar, Office of Registrar for Newspapers of India*, 2014 (140) DRJ 140.

⁴ Office of the State Coordinator, NRC, *Publication of Final NRC on 31st August, 2019*, GOVT. OF ASSAM (Aug. 31, 2019), <http://nrcassam.nic.in/pdf/English%20Press%20Brief%2031st%20August%202019.pdf>.

the 'immigrant problem' is one that has been successfully resolved. The research methodology employed by the author in order to do so is one that is doctrinal in nature. The current law and policies on statelessness and citizenship have been examined in order to appropriately compare the same to international jurisprudence.

2. National Perspective on Citizenship

India is neither a signatory to the United Nations Convention Relating to the Status of Stateless Persons, 1954 nor the United Nations Convention on the Reduction of Statelessness, 1961. The primary reason for the same is that the drafters of the Convention, employed a Western approach while formulating the policies. This approach limited India's contribution, even though India witnessed mass migration during the partition of 1947 on a large scale.⁵ The definition of refugees under these Conventions was very restrictive in nature. The difference between forced and mixed migrations⁶ wasn't given much importance at all.⁷ Moreover, rights conferred to the refugees under these Conventions did not take into consideration the lack of resources and limited means of Third World nations, where the standard of living is much lower compared to other states in Europe.⁸ Lastly, there was no mechanism for the sharing of costs among the immigrating and emigrating countries, which can cause severe damage to the economies of the Global South.⁹

Statelessness, as a concept, does not find any express mention in India's domestic jurisprudence. However, a minimal understanding of the concept can be gained with an analysis of a few domestic laws

⁵ S. Chimni, *Status of Refugees in India: Strategic Ambiguity*, in *REFUGEES AND THE STATE: PRACTICES OF ASYLUM AND CARE IN INDIA*, 444 (Ranabir Samaddar ed., 2003).

⁶ Bhairav Acharya, *The Future of Asylum in India: Four principles to Appraise Recent Legislative Proposals*, 9 *NUJS L. REV.*, 173 (2016).

⁷ *Id.*

⁸ Sreya Sen, *Understanding India's Refusal to Accede to the 1951 Refugee Convention: Context and Critique*, *ESPMI NETWORK*, <https://refugeereview2.wordpress.com/2015/05/28/understanding-indias-refusal-to-accede-to-the-1951-refugee-convention-context-and-critique/>.

⁹ *Id.*

dealing with citizenship. Article 5 of the Constitution of India¹⁰ provides citizenship based on birth and domicile in India, from the date of enactment of the Constitution. Section 3 of the Citizenship Act, 1955 provides for citizenship by birth; one or both of the parents are Indian, and the other is not an illegal immigrant. Under Section 5¹¹, citizenship can be provided by registration, and under Section 6¹², citizenship can be provided by naturalization. Under Section 6A, sub-section (2), the immigrants who entered the country before 1st January, 1966, and have resided in the country since then, would be deemed to be citizens of India as on 1 January, 1966.¹³ Any immigrant who has entered the territory of India after 25 March, 1971, would be deemed to be an illegal immigrant. Anyone entering the State of Assam in the period between 1 January, 1966 and 25 March, 1971 and who has ordinarily been a resident in Assam, can be considered as citizens, in accordance with the Rules formulated.¹⁴ However, they cannot be included in any electoral roll for a period of 10 years.¹⁵ No other forum, not even the judiciary, has the power to decide on the questions of citizenship, especially termination of citizenship.¹⁶ As to the detection of who is not an Indian citizen, legislations like Foreigners Act, 1946 and Illegal Migrants (Determination by Tribunals) Act, 1983 were enacted. However, the Supreme Court struck down the latter in 2005, as it was held to violate Article 14 and Article 355 of the Constitution of India.¹⁷ The Foreigners Act, 1946, defines a 'foreigner' as a person who is not a citizen of India.¹⁸ The Act also empowers the Central Government to

¹⁰ INDIA CONST, Art. 5.

¹¹ §5, The Citizenship Act, Act No. 57 of 1955, Acts of Parliament, 1955 (India).

¹² §6, The Citizenship Act, Act No. 57 of 1955, Acts of Parliament, 1955 (India).

¹³ §6A, The Citizenship Act, Act No. 57 of 1955, Acts of Parliament, 1955 (India).

¹⁴ §6A, The Citizenship Act, Act No. 57 of 1955, Acts of Parliament, 1955 (India).

¹⁵ Assam Public Works v. Union of India, (2019) 9 SCC 70.

¹⁶ Bhagwati Prasad Dixit v. Rajeev Gandhi, (1986) 4 SCC 78.

¹⁷ Sarbananda Sonowal v Union of India & Ors., A.I.R. 2005 SC 2920.

¹⁸ §2(a), The Foreigners Act, Act No. 31 of 1946, Acts of Parliament, 1946 (India).

arrest and detain or confine a foreigner till his deportation.¹⁹ Furthermore, it gives the government absolute power to expel a foreigner once detected.²⁰

Under Section 3 of Foreigners Act²¹, 1946 the Central Government enforced the Foreigner (Tribunal) Order, 1964 to establish quasi-judicial bodies with an aim to determine whether or not an individual could be classified as a foreigner, under the Foreigners Act, 1946.²² At present there are 100 Foreigners Tribunals operating in India, with many more going to be operational.²³ Over the years, the Foreigners Tribunal has played a vital role in the detection of foreigners in the State of Assam. The Tribunal works with the Assam Police Border Organization that patrols villages in an attempt to identify illegal immigrants. Those suspected to be illegal immigrants must produce documents proving their citizenship within 15 days. If they fail to do so, the Foreigners Tribunal determines their status. A report of the National Human Rights Commission in 2018²⁴ observed that most of the people detained were not provided any form of legal representation in order to stand before the Tribunal. Additionally, the Commission found that most of the detention orders were passed *ex parte*. Prashant Bhushan, an eminent civil activist, has also criticized the arbitrary working of these tribunals, prosecuting people without any investigation or on vague grounds

¹⁹ §3(g), The Foreigners Act, Act No. 31 of 1946, Acts of Parliament, 1946 (India).

²⁰ Hans Muller of Nuremberg v. Superintendent, Presidency Jail Cal., AIR 1955 SC 367.

²¹ §3, The Foreigners Act, Act No. 31 of 1946, Acts of Parliament, 1946 (India).

²² *Foreigners Tribunal*, Press Information Bureau, Ministry of Home Affairs (June 11, 2019), <https://pib.gov.in/newsite/PrintRelease.aspx?relid=190360>.

²³ GOVT. OF ASSAM, HOME AND POLITICAL (2019), <https://homeandpolitical.assam.gov.in/portlets/foreigners-tribunal>.

²⁴ NAT. HUMAN RIGHTS COMM. REPORT ON THE MISSION TO ASSAM'S DETENTION, 2018, <https://cjp.org.in/wp-content/uploads/2018/11/NHRC-Report-Assam-Detention-Centres-26-3-2018-1.pdf>.

or no grounds at all.²⁵ In a report by Amnesty International²⁶, the overarching role of the Guwahati High Court was criticized. The autonomy of the Tribunal has said to have been compromised due to the unnecessary interference by the Central and State governments.²⁷

3. Origins of Statelessness in Assam

Assam has witnessed immigration for decades following Indian Independence and bears witness to it even today. For example, in 1931, several believed that the large number of immigrants from Bengal would negatively affect the culture of the Assamese.²⁸ According to Joya Chatterji, a Professor of South Asian History and a Fellow of Trinity College at the University of Cambridge, more than 50 million people migrated to India between the 1930's and 70's.²⁹ The Nehru-Liaquat Agreement, also known as the Delhi Pact, was signed in 1950, to reduce the effect of migration by allowing immigrants to return to their native countries and dispose off their movable and immovable property.³⁰ This Agreement had a significant impact on Assam. A total of 1,61,360 migrants came to Assam via official channels.³¹

Around the 1970s, the situation in East Pakistan (now Bangladesh) became volatile. While they fought for their independence, there was an unprecedented increase in migration to India, especially in Bengal and Assam, as they shared their borders with East Pakistan. This border was loosely marked, often formed by natural borders like rivers and hills. Some of the contributing factors for this migration

²⁵Supreme Court Legal Services Committee v. Union of India, W.P. (CIVIL) NO. 1045 OF 2018.

²⁶*Designed to Exclude*, AMNESTY INT'L INDIA, (2019), <https://amnesty.org.in/wp-content/uploads/2019/11/Assam-Foreigners-Tribunals-Report-1.pdf>.

²⁷ *Id.*

²⁸ DR. MANJU SINGH, *POLITICS OF MIGRATION*, (1990).

²⁹ JOYA CHATTERJI, *THE SPOILS OF PARTITION*, (2008).

³⁰ Nehru-Liaquat, IND. - PAK., 8th April 1950.

³¹ HOME & POLITICAL DEPT, *White Paper on Foreigners Issue*, GOVT. OF ASSAM, (May 22, 2015), <http://onlineedistrict.amtron.in/web/home-and-political-department/white-paper>.

were 'push' factors from Bangladesh, which included overpopulation, low economic growth and reduction in the land-man ratio. 'Pull' factors towards India included better economic opportunities, the presence of already settled immigrants and penetrable borders.³²

4. The Assam Accord

The Census of 1951 showed that the growth rate of population in Assam was higher than the growth rate in the rest of the nation.³³ One of the biggest reasons for this growth was the continuing influx of immigrants into the state, especially Bangladeshi immigrants. Moreover, the Bangladeshi immigrants merged with the population and included themselves in electoral rolls. Following the death of Mr Hiralal Patwari, the then Lok Sabha representative of the Mangaldoi constituency, by-elections were held. It was this that laid the foundation for agitation. Many suspicious voters, mostly immigrants, were included in the voter list, which upset the indigenous voters of the constituency. The All Assam Students' Union (hereinafter referred to as AASU) and All Assam Gana Sangram Parishad (hereinafter referred to as AAGSP) launched a mass movement for the detection and deportation of immigrants from the state.³⁴ The protests were mostly non-violent, although occasional communal violence was observed. One such incident was the Nellie massacre of 1983, which claimed the lives of around 2000 Bengali Muslims in the Nagaon district of Assam.³⁵ The police reported more than forty instances of bomb blasts.³⁶

The dialogue between the Union government, State government and student unions of Assam, primarily AASU and AAGSP began in 1980. After five years of negotiations, the Assam Accord was signed

³² Sarbananda Sonowal v Union of India & Ors., AIR 2005 SC 2920.

³³ *Census of India*, (1951), <http://censusindia.gov.in/DigitalLibrary/browseyearwise.aspx>.

³⁴ Sanjin Baruah, *Immigration, Ethnic Conflict, and Political Turmoil--Assam, 1979-1985*, 26 U.C. PRESS, 1184 (1986).

³⁵ ASGHAR ENGINEER, COMMUNAL RIOTS AFTER INDEPENDENCE, 239 (Shipra 1st ed. 2004).

³⁶ HUSSAIN MONIRUL, THE ASSAM MOVEMENT: CLASS, IDEOLOGY, AND IDENTITY, (Manak Publications 1st ed. 1993)(1993).

on 15th August 1985, under the leadership of the then Prime Minister, Mr. Rajiv Gandhi, putting an end to six years of the Assam agitation.³⁷ The primary purpose of the Accord was the detection and deportation of foreigners from the state.³⁸ The Accord provided that:

1. For purposes of detection and deletion of foreigners, 1.1.1966 shall be the cut-off year. All persons who came to Assam before 1.1.1966, including those whose names appeared on the electoral rolls used in the 1967 elections, shall be regularized.³⁹
2. Foreigners who came to Assam after 1.1.1966 (inclusive) and up to 24th March 1971 shall be detected per the provisions of the Foreigners Act, 1946 and the Foreigners (Tribunals) Order 1964.⁴⁰
3. Names of foreigners so detected will be deleted from the electoral rolls in force. Such persons will be required to register themselves before the Registration Officers of the respective districts per the provisions of the Registration of Foreigners Act, 1939 and the Registration of Foreigners Rules, 1939.⁴¹

As a result of the Accord, the Citizenship Act, 1955 was amended in 1985 to include Section 6A which provided citizenship to Bangladeshi immigrants, who entered on or before the cut-off date specified in Section 5 of the Assam Accord, i.e. 01.01.1966.

5. The Judiciary and Immigration

The Assam Accord did little to solve the so-called 'immigrant problem' because it was not backed by executive action. In the 1990s, in a series of dialogues between the Central Government and student organizations of Assam like AASU and AAGSP, continuous assurances were provided for the implementation of the Accord clauses. In 2005, the Supreme Court observed that the massive influx of illegal immigrants into the nation would seriously jeopardize the

³⁷ *Supra* note 33.

³⁸ §5, Assam Accord, 1985, Memorandum of Settlement, 1985 (India).

³⁹ §5.2, Assam Accord, 1985, Memorandum of Settlement, 1985 (India).

⁴⁰ §5.3, Assam Accord, 1985, Memorandum of Settlement, 1985 (India).

⁴¹ §5.4, Assam Accord, 1985, Memorandum of Settlement, 1985 (India).

security of the nation, and would also pose a threat to the local Assamese culture.⁴² In the aforementioned case, the constitutional validity of the Illegal Migrants (Determination by Tribunals) Act, 1983, was challenged. The impugned Act, shifted the burden of proof from the person in question to the state, which was the position established *via* the Foreigner Act, 1946 and Foreigner Tribunal Order, 1962. This case took a diversion from the Supreme Court decision in *National Human Rights Commission v. State of Arunachal Pradesh*,⁴³ where the Court recognized the right of refugees against eviction, while their citizenship applications were still pending. The Court directed the Arunachal Pradesh State Government to forward citizenship applications to the Central Government for consideration and stayed the order of eviction of Chakma refugees from the country.⁴⁴ The Court struck down the impugned Act holding that it violated Articles 14 and 355 of the Indian Constitution.

In 2012, the Assam Sanmilita Mahasangha filed a petition under Article 32 of the Constitution, challenging Section 6A of the Citizenship Act, 1955 that provided citizenship to illegal immigrants who had entered before the cut-off date of 1st January, 1966.⁴⁵ The Division Bench in 2014, referred the matter to a Constitutional Bench. Since then, the matter has been pending before the Court. Additionally, the Division bench posed thirteen questions regarding citizenship and immigration to a larger bench (i.e. one constituting a minimum of five Judges), including one regarding the constitutional validity of Section 6A of the Citizenship Act, 1955.⁴⁶

The Division Bench also directed the Government to update the NRC⁴⁷ and to provide for border fencing, border roads and lights on the fencing.⁴⁸ The Supreme Court clearly played a very important and active role in the publication of the NRC. Following those

⁴² Sarbanda Sonowal v. Union of India & Anr., AIR 2005 SC 2920.

⁴³ National Human Rights Commission v. State of Arunachal Pradesh, 1996 AIR 1234.

⁴⁴ National Human Rights Commission v. State of Arunachal Pradesh, 1996 AIR 1234.

⁴⁵ Assam Sanmilita Mahasangha & Ors. v Union of India, AIR 2015 SC 783.

⁴⁶ Assam Sanmilita Mahasangha & Ors. v Union of India, AIR 2015 SC 783.

⁴⁷ Assam Sanmilita Mahasangha & Ors. v Union of India, AIR 2015 SC 783.

⁴⁸ Assam Sanmilita Mahasangha & Ors. v Union of India, AIR 2015 SC 783.

directions, a partial draft list was published in December 2017, and a full draft list in July 2018. Finally, the complete updated list of the NRC was published on 31st August, 2019.⁴⁹ Recently, the Apex Court refused to re-do the exercise of preparation of NRC.⁵⁰

6. The Preparation and Publication of the NRC

The NRC was first published in 1951 and has been repeatedly updated. It became a core part of the Assam Agitation and the various negotiations held thereafter. In 2003, the Central Government enacted rules for the preparation of the NRC, known as The Citizenship (Registration of Citizen & Issue of National Identity Cards) Rules, 2003. Under Rule 4A(2) of the Rules, the Central Government invited applicants from the residents of Assam to submit two kinds of documents, i.e., primary and additional documents. The objective was to grant citizenship to the applicant based on an individual's status or his ancestor's status. Primary documents included:⁵¹

1. Extract of the NRC, 1951.
2. Extract/Certified copy of Electoral Rolls up to the midnight of 24-3-1971 (midnight).
3. Land records including tenancy records of relevant period [up to 24-3-1971 (midnight)].
4. Citizenship certificate issued by the competent authority [up to 24-3-1971 (midnight)].
5. Permanent residential certificate issued from outside the state up to 24-3-1971 (midnight) (all of which must have been verified by the issuing authority or the registering authority).
6. Refugee registration certificate issued up to 24-3-1971 (midnight).

⁴⁹ Office of the State Coordinator, NRC, *Publication of Final NRC on 31st August, 2019*, GOVT. OF ASSAM (Aug. 31, 2019), <http://nrcassam.nic.in/pdf/English%20-Press%20Brief%2031st%20August%202019.pdf>.

⁵⁰ Assam Public Works v Union of India, (2019) 9 SCC 70.

⁵¹ Govt. of Assam, *What Are the Admissible Documents?*, <http://nrcassam.nic.in/admin-documents.html>.

7. Passport issued by the Government of India up to 24-3-1971 (midnight).
8. Life Insurance Corporation of India Insurance Policy (LICI) of the relevant period up to 24-3-1971 (midnight).⁵²

If the primary document produced is that of the applicant's ancestor, then the additional documents, like birth certificate, electoral roll, ration card and any other acceptable document, needs to be furnished to establish the applicant's relation with the ancestor.⁵³

The final version of the NRC. was published on 31st August 2019. 3,11,21,004 persons were eligible to be included in the Register.⁵⁴ Over 1.9 million became non-citizens of the country, and have therefore been rendered stateless.⁵⁵ The official order for expulsion can be appealed in the Foreigners Tribunal within 120 days of receiving the order.⁵⁶ If the aggrieved is unsatisfied with the order of the Tribunal, they can appeal to the High Courts or the Supreme Court. It has been clarified that no one will be automatically detained or expelled under any circumstance on account of non-inclusion in the NRC without the final order of the Tribunal.⁵⁷ In pursuance of the same, the Assam Government has added over two hundred Foreigner Tribunals to the existing hundred tribunals.⁵⁸ However, the task of accommodating nearly 2 million stateless people during

⁵²*Id.*

⁵³*Id.*

⁵⁴Office of the State Coordinator, NRC, *Publication of Final NRC on 31st August, 2019*, GOVT. OF ASSAM (Aug. 31, 2019), <http://nrcassam.nic.in/pdf/English%20-Press%20Brief%2031st%20August%202019.pdf>.

⁵⁵*Id.*

⁵⁶Press Information Bureau, Delhi, *Union Home Minister reviews issues related to NRC*, MINISTRY OF HOME AFFAIRS, (Aug 20, 2019), <https://pib.gov.in/PressReleasePage.aspx?PRID=1582399>.

⁵⁷Office of the State Coordinator, NRC, *Publication of Final NRC on 31st August, 2019*, GOVT. OF ASSAM (Aug. 31, 2019), <http://nrcassam.nic.in/pdf/English%20-Press%20Brief%2031st%20August%202019.pdf>.

⁵⁸*RTI Reveals Assam's Foreigners Tribunals Have No Designated Public-Information Officers*, THE CARAVAN (Jan. 9, 2020) <https://caravanmagazine.in/law/rti-reveals-assam-foreigners-tribunals-have-no-pio-officers>.

the period of appeal or prior to deportation, still has not received enough attention.

7. International Perspective

Article 15 of Universal Declaration of Human Rights⁵⁹ provides for the universal right of citizenship and non-arbitrary deprivation of nationality. A stateless person has been defined under Article 1(1) of the United Nations Convention Relating to the Status of Stateless Persons, 1954⁶⁰ as 'a person who is not considered as a national under any state laws'. The concept of statelessness gained importance during the Second World War, when several people were displaced due to the various atrocities committed, thus leading to mass immigration. As a result, thousands were rendered stateless. The United Nations Convention Relating to the Status of Refugees came into force on 22 April, 1954.⁶¹ The Convention aims to provide rights to the refugees, including stateless refugees and create an obligation on states to protect such rights. Article 34 of this Convention emphasizes on the assimilation and naturalization of refugees into the state.⁶²

Another key instrument to address the issue of statelessness, is the United Nations Convention Relating to the Status of Stateless Persons enforced in 1954. It defines a stateless person as someone who is not considered as a national under any state law.⁶³ Further, under the United Nations Convention on the Reduction of Statelessness, 1961, *jus soli* citizenship has to be granted by the state to the person, who is born in its territory regardless of his statelessness.⁶⁴ According to Black's Law Dictionary, *jus soli* means

⁵⁹ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).

⁶⁰UN General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p.117.

⁶¹U.N. General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, 189 Treaty Series 137.

⁶²*Id.*

⁶³UN General Assembly, *Convention Relating to the Status of Stateless Persons*, Art. 1(1), SEPT. 28, 1954, United Nations, Treaty Series, vol. 360, p. 117.

⁶⁴UN General Assembly, *Convention on the Reduction of Statelessness*, 30 August 1961, United Nations, Treaty Series, vol. 989.

right of the soil, where the place of birth determines citizenship.⁶⁵ Citizenship is not dependent on other factors such as nationality, descent or ethnicity.⁶⁶ The aim of these Conventions⁶⁷ is to reduce the number of people rendered stateless by providing citizenship by birth, descent and naturalization. Additionally, many international organizations are also working to address the issue of statelessness, including the United Nations High Commissioner for Refugees (hereinafter referred to as UNHCR) and the European Network on Statelessness.⁶⁸

The number of stateless people was estimated to be around 3.8 million in 2017.⁶⁹ However, this does not take into account those belonging to countries like India, China, the United States of America and Bangladesh, which have the largest number of undocumented immigrants. If these numbers are taken into account, the number of those rendered stateless will be well past 10 million.⁷⁰

⁶⁵BRYAN GARNER, BLACK'S LAW DICTIONARY (7th ed. 1999).

⁶⁶NIRAJA JAYAL, CITIZENSHIP AND ITS DISCONTENTS: AN INDIAN HISTORY, (2013).

⁶⁷UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171; UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3; UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, DEC.18, 1979, United Nations, Treaty Series, vol. 1249, p. 13; Un General Assembly, *Convention on the Nationality of Married Women*, JAN. 29, 1957; UN General Assembly, *Convention on the Reduction of Statelessness*, AUG. 30, 1964, United Nations, Treaty Series, vol. 989, p. 175, UN General Assembly, *Convention Relating to the Status of Stateless Persons*, SEPT. 28, 1954, United Nations, Treaty Series, vol. 360, p. 117.

⁶⁸U.N.H.C.R., *About UNHCR*, <https://www.unhcr.org/en-in/about-us.html>; European Network on Statelessness, *About European Network on Statelessness*, <https://www.statelessness.eu/>.

⁶⁹U.N.H.C.R., *UNHCR's Global Statelessness Statistics for 2017*, www.unhcr.org/globaltrends2017.

⁷⁰Institute on Stateless and Inclusion, *Statelessness in numbers: 2018*, An overview and analysis of global statistics available at - https://files.institutesi.org/ISI_statistics_analysis_2018.pdf.

In 2014, the UNHCR launched a campaign called the 'I Belong Campaign' to eradicate statelessness by 2024.⁷¹

Many countries have addressed this issue by granting those rendered stateless, citizenship on a large scale. Steps were taken to absorb those rendered stateless into individual nations, without compromising the interest of the native inhabitants of the state. For instance, in 2003, Nepal granted citizenship to 2.3 million stateless people in four months.⁷² Similarly, in 2003, Sri Lanka extended citizenship to several Tamil Indians who were emigrated by the British, to work in tea and coffee farms in Sri Lanka.⁷³ By the end of 2004, more than two hundred thousand people were granted citizenship.⁷⁴ This was also seen in Russia where, in 2002, citizenship was offered to former citizens of The Soviet Union, on the condition of permanent residency in Russian soil. Under this policy more than six hundred thousand citizens were naturalized into Russia.⁷⁵

8. Concerns with the NRC

The updated version of the NRC, with over three crore applications, excluded about 19 lakh names. As mentioned earlier other than the matter of exclusion, there have been several other concerns raised. For example, claims have been raised by many bodies like the Rashtriya Swayamsevak Sangh (RSS) in Assam, that the names of

⁷¹U.N.H.C.R., *About Statelessness*, <https://www.unhcr.org/ibelong/about-statelessness/>.

⁷²Refugee International, *Nationality Rights for all: A progress report and global survey on statelessness*, 12, 2009, (Oct. 30, 2019), <https://www.refworld.org/pdfid/49be193f2.pdf>,

⁷³Luwie Ganeshathasan and Asanga Welikala, *Report on Citizenship Law: Sri Lanka*, May 2017, page 10, https://cadmus.eui.eu/bitstream/handle/1814/46448/RSCAS_GLOBALCIT_CR_2017_10.pdf.

⁷⁴Chetani Priyanka Wijetunga, UNHCR, *Feature: Sri Lanka makes citizens out of stateless tea pickers*, <https://www.unhcr.org/news/latest/2004/10/416564cd4/feature-sri-lanka-makes-citizens-stateless-tea-pickers.html>.

⁷⁵UN High Commissioner for Refugees (UNHCR), *The State of the World's Refugees: In Search of Solidarity*, 2012, available at: <https://www.refworld.org/docid/5100fec32.html> [accessed 6 May 2020]

genuine inhabitants of Assam have been left out.⁷⁶ Soldiers like Dilbar Hussain and Mijanur Ali, serving in the Indian Army, have also been excluded from the list.⁷⁷ It is pertinent to note that the same men were considered Indian citizens during verification of documents, as part of their selection to the Armed Forces. There have also been criticisms alleging that the NRC specifically discriminates against the Bengali speaking Muslims, who migrated to Assam during the British colonization of the then-Bengal.⁷⁸

One of the biggest concerns with the NRC is its constitutionality. In the opinion of Faizan Mustafa, a renowned human rights activist, implementation of the NRC is *ultra vires* its parent act, i.e., the Citizenship Act, 1955.⁷⁹ Section 3(1) of Citizenship Act, categorically grants *jus soli i.e.*, by birth citizenship to every person born after 26th January, 1950 and before 1st July of 1987. However, the pre-requisites of the NRC, when read with Registration of Citizens and Issue of National Identity Card Rules 2003, creates an additional condition that one must be a descendant of a citizen. It is this that makes it *ultra vires* the Citizenship Act, 1955.

Moreover, the NRC stands in violation of the Fundamental Rights of Equality (under Article 14) and of Life and Liberty (under Article 21). It fails the test of reasonable classification as laid down by the Supreme Court on numerous occasions.⁸⁰ The Classification must be based on an intelligible differentia, which distinguishes those that are grouped from others, and that differentia must have a rational

⁷⁶Arundhati Roy, Intimations of an Ending, THE CARAVAN, Nov. 2019.

⁷⁷India Today, Assam: Excluded in N.R.C., Army soldiers ask should they fight enemy or prove citizenship, (Oct. 30, 2019). <https://www.indiatoday.in/india/story/assam-army-soldiers-excluded-in-N.R.C.-saruharid-village-1594715-2019-09-03> (last accessed - Oct. 30, 2019)

⁷⁸Archit Guha, The “Illegal Immigrant” Identity And Its Fragments – From “Enemy Foreigner” To “Bangladeshi Illegal Immigrant” In (Post) Colonial India, 12 Socio-Legal Rev. 108 (2016).

⁷⁹Karan Thapar and Faizan Mustafa, *NRC Breaches Citizenship Act and Is Unconstitutional*, THE WIRE, (Sept. 10, 2019), <https://thewire.in/law/nrc-citizenship-act-assam>.

⁸⁰State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75; Indra Sawhney v. Union of India, AIR 2000 SC 71; Maneka Gandhi v. Union of India, AIR 1978 SC 597.

relation to the object that the law seeks to achieve. In a note as *amicus curiae* in the case of *Supreme Court Legal Services Committee v. Union of India*,⁸¹ Mr. Prashant Bhushan threw some light on the plight of the detenus in the aforementioned detention centers. He argued that ‘the indefinite detaining of detenus in a prison violates their fundamental rights. A person’s liberty can only be taken by a procedure established by law which is just, fair and reasonable.’⁸² Moreover, the concerns regarding the inhuman conditions in these detention centers have only escalated, since the National Human Rights Commission published their report.⁸³ Mr. Bhushan, in his aforementioned note, has also expressed concerns of significant death tolls reaching around twenty nine in number, in these detention centers. Additionally, the current infrastructure cannot accommodate more than a few thousand detainees. In practical terms, it would be nearly impossible to increase that number to around two million in the immediate future. Not only is there no mechanism in place to accommodate those soon to be deported within India, but also no clarity regarding where they would be deported to. At present, Bangladesh has been assured by India that the NRC issue is an internal matter. Bangladesh is already hosting refugees of around 490,000 Rohingya Muslims from Myanmar⁸⁴. Therefore, even if the Indian government attempts to deport those excluded from the NRC, there is no provision in place that provides for the place of deportation.

The Citizenship Amendment Act, 2019 also provides citizenship to refugees only on the basis of religion, i.e. only to one belonging to the Hindu, Sikh, Buddhist, Jain, Parsi or Christian community, who has faced persecution.⁸⁵ The Citizenship Amendment Act, 2019 read with the NRC would dilute the efforts of the Assam Accord, by

⁸¹ W.P. (Civil) No. 1045/2018.

⁸² *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

⁸³ *Supra* note 24.

⁸⁴ HUMAN RIGHTS WATCH REPORT ON THE PLIGHT OF THE ROHINGYA REFUGEES FROM MYANMAR(2018), <http://www.hrw.org/report/2018/08/05/Bangladesh-not-my-country/plight-rohingya-refugees-myanmar>

⁸⁵ §2, The Citizenship Act, Act No. 57 of 1955, Acts of Parliament, 1955 (India).

giving immigrants citizenship after the prescribed cut-off date. It should be the State's responsibility to prove the lack of citizenship of an individual, not the other way around. Also, since most of the detention centers are run by district jails, the detainees are residing with the incarcerated. Without a specific procedure in place, it would be hard to distinguish a detainee from a convict. Therefore, it's essential that along with development of infrastructure, the Government should monitor the status of those rendered stateless, so that they can be deported appropriately. It is also important that India reaches an agreement with Bangladesh to ensure the safety of the stateless who will, inevitably, be deported to Bangladesh.

Moreover, under the present provisions, a person can only be detained for three years.⁸⁶ There needs to be a policy that can allow the detainees to merge with the nation without compromising the interest of the native inhabitants of the state. Therefore, the rights and interests of detainees should not be neglected while protecting those of the natives. The current grievance redressal mechanism, put together in a hasty manner by the government, will ultimately not benefit those being deported.

9. Recommendations

In the absence of express detention laws, the government should observe international immigration detention laws, such as those provided for by the UNHCR.⁸⁷ These guidelines strike a much-needed balance between protection of native interests, as well as the interests of the individuals who would be deported in the near future. The guidelines protect an individual's right to liberty and security⁸⁸, right to freedom of movement⁸⁹, right against arbitrary, discriminatory and indefinite detention.⁹⁰ The detention guidelines

⁸⁶ Harsh Mander v. Union of India, W.P. (Civil) 1045 of 2018.

⁸⁷UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention* (2012), <https://www.refworld.org/docid/503489533b8.html>.

⁸⁸*Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

also provide alternatives to detention⁹¹ like house curfew, bails/bonds, and community supervision and emphasize that detention should only be used as a last resort⁹². Therefore, the Central Government must develop a policy that would provide a similar framework - humane conditions, parole facilities, recreational facilities, and opportunity for employment of detenus. Moreover, special attention needs to be given to vulnerable groups including women, children, individuals with disabilities and those belonging to the LGBTQ+ communities, as they are more likely to face ill treatment within these centers.

As mentioned earlier, the detention centers have limited capacities. The accommodation of detenus along with criminals in prison, is a grave violation of the human rights of the detenus, as they are being held in prison, without any legal representation.⁹³ Therefore, the government should not take any further detenus, unless appropriate centers are constructed. Increasing the number of those detained would put a significant amount of strain on the State's resources. The government's efforts to improve the infrastructure should extend beyond detention centers to the number of Tribunals, information centers, redressal forums etc. Lastly, the government should take proactive measures to expedite the deportation of final detenus who have exhausted all their legal options. Diplomatic talks with Bangladesh, will inevitably play a major role in this process, and must take priority.

10. Conclusion

The NRC plays an integral role in the detection and deportation of foreigners into the state of Assam. However, it is clear that it is not without its faults. The biggest flaw in the implementation of the NRC is that there exists no provision to further regulate those rendered stateless; no provision for their deportation or for their amalgamation into the society. The lack of equality and dominance of arbitrariness in the detection and detention process has clearly been highlighted. The NRC therefore, with the absence of

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Supra* note 24.

appropriate machinery, fails to address the 'immigrant problem' and succeeds in creating a myriad of human rights violations. With the enactment of the Citizenship Amendment Act, 2019, it has become more urgent than ever to create a proper system to adequately and efficiently deal with the aforementioned issues. It is evident that the notion of citizenship has roots in the concept of ethno-nationalism. The need to identify and deport 'illegal immigrants' has led to the enactment of inefficient and very vaguely worded policies. These only ensure that instead of any form of legal and procedural enactment of deportation laws, the policies that encourage arbitrariness are the ones that ultimately succeed.